

TO: Director of the U.S. Patent and Trademark Office  
 Mail Stop 8  
 P.O. Box 1450  
 Alexandria, VA 22313-1450

**REPORT ON THE  
 FILING OR DETERMINATION OF AN  
 ACTION REGARDING A PATENT OR  
 TRADEMARK**

In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been  
 filed in the U.S. District Court at Cincinnati on the following X Patents or Trademarks:

DOCKET NO. 1:09-cv-795	DATE FILED 10/29/09	U.S. DISTRICT COURT Southern District of Ohio
PLAINTIFF Ample Industries, Inc.	DEFENDANT Dopaco, Inc.	
PATENT OR TRADEMARK NO. 16,053,403	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK See attached complaint.
2		
3		
4		
5		

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY	<input type="checkbox"/> Amendment	<input type="checkbox"/> Answer	<input type="checkbox"/> Cross Bill	<input type="checkbox"/> Other Pleading
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK			
1		See attached complaint.			
2					
3					
4					
5					

In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT
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CLERK JAMES BONINI	(BY) DEPUTY CLERK s/Shawntel Jackson	DATE 10/29/09
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Copy 1—Upon initiation of action, mail this copy to Director Copy 3—Upon termination of action, mail this copy to Director  
 Copy 2—Upon filing document adding patent(s), mail this copy to Director Copy 4—Case file copy

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## CONICAL FOOD SCOOP

## BACKGROUND OF THE INVENTION

Food scoops of the type normally referred to as french fry scoops are widely used as containers, particularly in "fast food" establishments, for the dispensing of french fries, onion rings, chicken nuggets and like "finger" foods.

Such known scoops are of a generally rectangular configuration with a higher back wall providing for or assisting in the scooping of the fries therein.

With the conventional scoop, the container, when filled, will normally lie flat on its back panel with the contents tending to spill from the open mouth thereof, unless the scoop is held upright in the consumer's hand or is otherwise physically maintained in a vertical position as by being wedged in a serving tray by adjacent products. The actual holding of the scoop can be awkward because of the elongate rectangular configuration.

The conventional scoop also incorporates multiple vertically extending fold lines defining distinct planar sides to the scoop which do not particularly lend themselves to a continuous surface pattern about the peripheral wall of the scoop. Problems may also arise with regard to the proper filling of the conventional scoop, and the withdrawal of the fries or the like therefrom in light of the relatively narrow, elongate nature of the scoop and the angular corners provided about the interior thereof.

Attempts have been made to improve on the conventional fry scoop in various ways, including increasing the curvature of the front and rear walls, particularly toward the upper portion of the scoop, and forming the lower portion into a cross-sectional configuration which more closely approaches a square rather than an elongate rectangle with fold lines defining the lower generally square configuration of the scoop and the opposed sides of the scoop being substantially planar for at least a portion of the height thereof upward from the bottom. However, the use of fold lines in the wall panels inherently causes an interruption in any surface patterns or indicia. Further, while a square bottom may provide more stability for a self-standing scoop, there is much room for improvement. In this regard, a square bottom does not particularly lend itself to formation from a single blank, and problems in attempting to provide a wrinkle-free base are substantial.

## SUMMARY OF THE INVENTION

The present invention significantly improves over the conventional scoop or suggested variations thereof by providing a scoop which is capable of independently standing upright in a particularly stable manner, and which is particularly adapted to nest within conventional cup holders in the same manner as a conventional drink cup. It is also a particularly significant object of the invention to provide a scoop wherein the peripheral exterior of the scoop, for the full height thereof, is devoid of fold lines and presents a continuous generally cylindrical or conical surface for enhanced display of surface indicia, ease of handling, enhanced food capacity, and the like. In conjunction therewith, while generally the same forming techniques will be used, it is contemplated there will be a reduction in the amount of material required for a comparable volume. Further, as no fold lines are required in the formation of the peripheral wall, the forming and folding of the blank should be simplified.

Basically, the scoop of the invention is formed with a generally cylindrical, or more particularly an inverted

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slightly truncated configuration with an open upwardly directed mouth and a closed bottom. The mouth is defined by a curvilinear upper edge having a first forward or front extent of an upward concave shape and a rear or back extent of an upward convex shape with the opposed extents meeting at the opposed sides of the wall whereat vertical joinder seams are provided between the curved front and rear wall panels. The external surface of the scoop is continuous and circular in cross-section, interrupted only by the opposed overlapping glued seams, allowing for an uninterrupted presentation of surface indicia. The formed scoop, in light of the generally cylindrical configuration, particularly of the lower portion thereof, uniquely lends itself for engagement within cup containers for a hands-free presentation of the scoop in the manner of a conventional drink cup. Similarly, the substantially circular base of the scoop in conjunction with a recessed bottom or bottom panel, regardless of whether the bottom is upwardly or downwardly folded relative to the interior of the scoop, provides for a free self supporting positioning of the scoop. This accommodation of different positions of the bottom is achieved by the provision of distinct arcuate support feet which provide a support base below the bottom panel.

The blank from which the scoop is formed includes a central bottom panel which can broadly be considered of slightly elongate circular configuration, and opposed front and rear wall panels aligned with the long axis of the bottom panel and extending outward therefrom. The panels have base edges laterally extending from the bottom panel and outwardly extending side edges at substantially equal angles to the base edges with one panel terminating in an outer edge which is concave for the full extent thereof, and the second relatively longer panel terminating in a convex outer edge which is convex for the full extent thereof.

The bottom panel, integral with the front and rear wall panels, forms the bottom of the cup-like lower portion of the scoop during the formation of the scoop and avoids the necessity of providing a separate member seamed to the lower edge of the peripheral wall. As the bottom panel will have to conform to the generally cylindrical forming of the wall panels, it is considered particularly significant that preformed fold lines, preferably of opposed arcs or an "x" arrangement, be provided in the bottom panel of the blank to relieve stress during folding, and ensure a proper upward folding of the bottom panel without wrinkling or otherwise causing an unattractive and possibly weakened bottom.

Other features and details of the scoop will become apparent from the more detailed description of the invention as follows.

## BRIEF DESCRIPTION OF THE DRAWINGS

FIG. 1 is top perspective view of the scoop of the invention;

FIG. 2 is a bottom perspective view of the scoop;

FIG. 3 is a top plan view of the scoop;

FIG. 4 is a vertical section through the scoop; and  
FIG. 5 is a plan view of the blank from which the scoop is folded, with another preferred form of bottom panel fold lines illustrated.

## DESCRIPTION OF PREFERRED EMBODIMENTS

The scoop 10 includes a vertical wall 12 of generally cylindrical and preferably slightly conical configuration increasing in circular diameter from a lower edge 14 to an enlarged curvilinear and generally inclined peripheral upper edge 16.

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The wall 12, also noting the blank of FIG. 5, is defined by front and rear wall panels 18 and 20 inwardly rolled toward each other into semi-cylinders with overlapping edge portions adhesively bonded to form opposed side seams 22. These side seams 22 constitute the only interruptions in the otherwise smooth uninterrupted conical or cylindrical surface of the scoop 10, with the scoop providing, in effect, a cup-like configuration and a surface which is particularly adapted for presenting indicia continuously about the periphery thereof. There are no surface interrupting vertical fold lines or vertical angles formed thereby, and substantially circular cross-sections are maintained throughout the height of the scoop 10.

The upper edge 16 of the scoop wall 12 includes a forward extent 24, formed along the upper edge of the front wall panel 18, which is concave between the edges defining the seams 22. A similar rear extent 26 of the upper edge 16 is convex and defined by the upper edge of the rear panel 20 between the seam-defining edges thereof whereat the rear panel 20 is joined to the front panel 18. The arcs of both the front panel extent 24 and the rear panel extent 26 are substantially the same and, in the areas of the seams 22, provide for a smooth transition between concave and convex curvatures, providing for a substantially greater height to the rear or "scoop" portion of the wall 12 and a continuous sloping of this top edge 16 from a high point at the center of the convex extent 26 to a low point at the center of the concave extent 24.

The scoop 10 includes a bottom 28 of generally elongate circular configuration and integrally formed with and extending between the wall panels 18 and 20 slightly inward of the lower edge portions of the wall panels. The opposed longitudinally spaced arcuate edge portions of the bottom 28, indicated by fold lines 30 in the blank of FIG. 5, produce a slight transverse, preferably upward, curvature to the bottom 28 in the erected scoop 10 and thus enhance the rigidity of the bottom 28 and the wall 12 of the scoop. It is significant that specific fold lines 29 be provided in the bottom 28 as the blank is produced to facilitate the upward arcing thereof as the scoop is formed from the blank. It has also been found that the fold lines 29, to ensure a proper folding of the bottom panel as the scoop is erected, and to avoid any wrinkling or otherwise distorting of the bottom panel, must originate in the corners of the bottom defined by the opposed ends of the bottom defining fold lines 30 as in the illustrated examples. No separate bottom panel insert or the like is required.

The fold lines 29 in the bottom panel, preferably of an "x" configuration as in FIGS. 2 and 3 or opposed arcs as suggested in FIGS. 4 and 5, are particularly significant in ensuring a controlled upward forming of the bottom panel 28 in conjunction with the transverse arcing of the front and rear panels 18 and 20. This upward folding of the bottom 28 is, in the manufacturing procedure, normally achieved by the use of a suction member which, as the lower panels are arced, produces an upward lift on the bottom panel. In the absence of such fold lines 29, there would be a substantial tendency for the bottom panel to wrinkle and randomly fold in a manner which would weaken the lower portion of the scoop and produce an unattractive appearance, the appearance of the container being of significance in directly dealing with the public.

The performing of the fold controlling or guiding lines 29 is also significant in accommodating any slight irregularities in the blank which might affect the optimum alignment of the two semi-cylindrical wall panels and which, while not noticeable in the finished product, could cause problems in the formation of the bottom without the fold controlling lines 29.

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Another particular advantage of the specific fold lines 29 is to accommodate those instances wherein, because of design preferences, manufacturing tolerances, slight misalignments, or the like, the bottom panel 28 does not upwardly fold, but rather, flexes downward. Again, with no controlling fold lines 29, the downwardly flexed bottom panel would be formed with random wrinkles and a resultant appearance which would not be particularly acceptable either to the dispenser of the foodstuffs or the purchaser. However, with the controlling fold lines, particularly the "x" configuration of FIG. 3 and the opposed arcs of FIG. 5, any downward forming of the bottom panel, as opposed to the preferred upward folding, would produce a clearly defined bottom of specific angularly related panels which provide a finished appearance to the bottom slightly recessed relative to opposed arcuate foot sections 32. In either situation, a finished appearance is provided and, by providing for the controlled forming of the bottom, any stresses therein, as might wrinkle the bottom or disform the lower portion of the scoop, are relieved.

The fold lines 30 which define the bottom 28 are slightly inwardly offset from the lower edges of the wall panels 18 and 20 and extend between the inner ends of slits 31 which continue the arcs of the opposed longer sides of the bottom. By forming the bottom 28 in this manner, and as will be appreciated from FIGS. 1 and 2, the lower portion of the scoop 10 has the opposed arcuate foot sections 32 formed to and slightly outward of the opposite arcuate sides of the bottom 28. The foot sections 32 extend below the bottom to provide elongate front-to-rear support feet for the scoop, each foot section being centrally positioned with regard to a corresponding side seam 22. Each of the foot sections 32 is slightly upwardly offset centrally thereof whereby the lower support edge actually makes contact with a support surface only at the outer tips thereof, thus providing a more stable engagement with a table surface or the like, particularly should there be any irregularities in the surface. Such an edge configuration is provided for in the blank by extending the base edge end portions 34 of each of the front and rear wall panels 18 and 20, laterally outward from the bottom panel 28, at a slight outward angle toward the opposed base edges.

With continued reference to the blank of FIG. 5, it will be noted that the widths of both wall panels 18 and 20 at the base edge are substantially equal, as are the angles of the outwardly extending side edges 36 of panel 18 and side edges 38 of panel 20 which, in the formed scoop 10, define the side seams 22. The panels 18 and 20, in the blank, are planar and without fold lines. The only fold lines, other than those used to shape the bottom 28, are fold lines 30 between bottom 28 and the lower edge portions of the wall panels 18 and 20.

While the lower portion of the formed scoop is circular in cross-section, it is significant to note that the bottom 28 and the panel in the blank from which the bottom is formed are of an elongate circular configuration rather than a perfect circle in that a circular bottom panel of equal diameter with the lower portion of the scoop will not properly form into a scoop bottom without substantial disruptive wrinkling, even if fold guiding lines are provided. Further, any attempt to avoid this problem by providing that the opposed longitudinal edges of the bottom panel be straight will result in a rather large and generally impractical gap between the opposed straight edges and the circular scoop wall at the lower end thereof. While this might be acceptable for large food products, with smaller or thinner food products, such as shoestring french fries and the like, such products can easily fall through the gaps.

In avoiding these problems, the bottom 28 is elongate, along the longitudinal axis in the blank, and specifically includes opposed arcuate side edges which both avoid possible disruptive contact with the corresponding opposed arcuate portions of the formed scoop wall, and at the same time minimize the gap 36 provided therebetween, note FIG. 3. Basically, the arcs of fold lines 30 are on equal radii with a center at or close to the center point of the bottom panel. The arcs of the side edges of the bottom panel are on equal radii greater than the first radii.

From the foregoing, it will be appreciated that a unique french fry scoop has been defined which, both structurally and functionally, constitutes a significant advance in the art. As variations, within the scope of the claims appearing hereinafter, may occur to those skilled in the art, it is not intended to limit the invention to the specific embodiments illustrated.

1 claim:

1. A food scoop comprising a vertically elongate generally cylindrical wall, said wall having an upper peripheral edge forming an upwardly opening mouth, and a lower peripheral edge with a bottom joined thereto, said upper edge being continuously curvilinear and having a first extent of a downwardly concave configuration and a second opposed extent of upwardly convex configuration positioned higher relative to said first extent, wherein said first concave extent and said second convex extent meet at two substantially opposed areas on said upper peripheral edge.

2. The scoop of claim 1 wherein said wall is of a predetermined circular cross-section adjacent said lower edge and of a progressively increasing circular cross-section upward therefrom to said upper edge.

3. The scoop of claim 2 wherein said wall includes a front wall panel with opposed vertical edges and an upper concave edge extending to and between said vertical edges of said front wall panel and defining said first extent, and a rear wall panel with opposed vertical edges and an upper convex edge extending to and between said vertical edges of said rear wall panel and defining said convex extent, said opposed edges of said rear wall panel being bonded to said opposed edges of said front wall panel.

4. The scoop of claim 3 wherein said bottom is integrally formed with said front and rear wall panels inwardly spaced from said bonded opposed vertical edges of said front and rear wall panels.

5. The scoop of claim 1 wherein said wall is of a predetermined circular cross-section adjacent said lower edge and of a progressively increasing circular cross-section upward therefrom to said upper edge.

6. A food scoop comprising a vertically elongate generally cylindrical wall, said wall having an upper peripheral edge forming an upwardly opening mouth, and a lower peripheral edge with a bottom joined thereto, said upper edge being continuously curvilinear and having a first extent of a downwardly concave configuration and a second opposed extent of upwardly convex configuration positioned higher relative to said first extent, wherein said wall includes a front wall panel with opposed vertical edges and an upper concave edge extending to and between said vertical edges of said front wall panel and defining said first extent, and a rear wall panel with opposed vertical edges and an upper convex edge extending to and between said vertical edges of said rear wall panel and defining said convex extent, said opposed edges of said rear wall panel being bonded to said opposed edges of said front wall panel.

7. The scoop of claim 6 wherein said bottom is integrally formed with said front and rear wall panels inwardly spaced

from said bonded opposed vertical edges of said front and rear wall panels.

8. For use in the formation of a food scoop of an inverted, truncated conical configuration; a unitary blank, said blank comprising opposed front and rear wall panels aligned along a longitudinal axis of said blank, said panels having spaced facing base edges, a bottom panel integral with each of said front and rear wall panels at said base edges and extending therebetween, said bottom panel being elongate along said longitudinal axis and having a first opposed pair of longitudinally spaced arcuate edges and a second pair of laterally spaced arcuate end side edges, said arcuate end edges being of a predetermined radius and being defined in said opposed wall panels in inwardly spaced relation to the corresponding base edges thereof, said arcuate side edges of said bottom panel being on a greater radius than said predetermined radius and continuing through said opposed wall panels to define opposed corners with said end edges, said opposed wall panels having slits extending inward relative to said base edges and aligned with said bottom panel side edges to accommodate extension of said side edges to said end edges, the base edge of each panel extending laterally beyond said bottom panel to form a pair of opposed base edge end portions, said front and rear wall panels each having an outer edge in spaced opposed relation to the corresponding base edge, said front and rear wall panels each having opposed side edges extending between the corresponding base edge and outer edge, said outer edge of said front panel being concave, said outer edge of said rear panel being convex.

9. The structure of claim 8 wherein said base edge and said outer edge of each of said front and rear panels terminate in outer ends, said opposed side edges of each of said wall panels extending between the outer ends of the corresponding base edge and outer edge.

10. The structure of claim 9 wherein the concave outer edge of said front panel is concave for the full extent of the outer edge between the ends thereof, said convex outer edge of said rear panel being convex along the full extent thereof between the outer ends thereof.

11. The structure of claim 10 wherein said opposed side edges of each of said front and rear wall panels diverge outwardly from each other from the corresponding base edge to the corresponding outer edge to define a generally truncated triangular configuration for each wall panel.

12. The structure of claim 11 wherein said base edges of said front and rear panels are of equal length.

13. The structure of claim 12 wherein the end portions of the base edges to each side of said bottom panel converge outwardly to the corresponding side edges of said wall panels.

14. The structure of claim 8 wherein said base edges of said front and rear panels are of equal length.

15. The structure of claim 14 wherein the end portions of the base edges to each side of said bottom panel converge outwardly to the corresponding side edges of said wall panels.

16. The structure of claim 9 including fold lines defined in said bottom panel and extending inward from opposed corners of said bottom panel and generally diagonally in said bottom panel.

17. The structure of claim 16 wherein two of said fold lines are formed in said bottom panel, said two fold lines each being of a generally arcuate configuration extending between two of the corners of the bottom panel within a single wall panel.

18. The structure of claim 16 wherein said score lines in said bottom panel comprise two score lines, each extending

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diametrically across said bottom panel between diametrically opposed corners with said score lines crossing centrally within said bottom panel.

19. A food scoop comprising a vertically elongate peripheral wall, said wall having an upper peripheral edge forming an upwardly opening mouth, and a lower peripheral edge with a bottom joined thereto, said wall being of a predetermined diameter adjacent said lower edge and of a progressively increasing diameter upward therefrom to said upper edge, said wall including a front wall panel with opposed vertical edges and a rear wall panel with opposed vertical edges, said opposed edges of said rear wall panel being bonded to said opposed edges of said front wall panel, said bottom being integrally formed with said front and rear wall panels along arcuate fold lines defining end edges of said bottom, said bottom having opposed arcuate side edges

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inwardly spaced from said bonded opposed vertical edges of said front and rear wall panels.

20. The scoop of claim 17 wherein said lower peripheral edge of said wall, laterally outward of the opposed arcuate side edges of said bottom, depend below said bottom and defines arcuate support feet for said scoop independently of said bottom.

21. The scoop of claim 20 wherein said bottom end edges and side edges define two pairs of diametrically opposed corners, and guiding fold lines formed in said bottom, said guiding fold lines extending generally diametrically inward from said corners wherein said bottom is laterally offset in a vertical direction solely along said guiding fold lines.

\* \* \* \* \*

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OF COUNSEL  
GEORGE H. SPENCER\*

September 8, 2009

Greenebaum, Doll & McDonald PLLC  
3500 National City Tower  
101 South Fifth Street  
Louisville, KY 40202-3197

Attention: James C. Eaves, Jr., Esq.

Re: French Fry Scoop - Dopaco v. Ample Industries

Dear Mr. Eaves:

It has been several months since we have exchanged communications regarding Dopaco's charge that your client, Ample Industries, has infringed one or more claims of the Dopaco Patent No. 6,053,403.

In conjunction with my client, we have carefully investigated several scoop constructions manufactured by Ample, including the sample of the Arby's scoop that you gave to me during the INTA meeting in Seattle last May.

It is apparent that Ample markets two scoops, one that we procured from an Arby's location earlier this year and the scoop that you gave to me in Seattle. In my opinion, the early small scoop is a literal infringement of one or more claims of the patent in issue and the redesigned larger scoop would infringe under the doctrine of equivalents.

This particular patented construction was the result of expensive and extensive design and testing and represents a valuable intellectual property right of Dopaco.

My client intends to protect these rights and I have been authorized to take the appropriate legal action in the federal courts if the parties are unable to promptly settle this matter.

I have reviewed your analysis of the patent claims as set forth in your letter to me of May 18, 2009, but find them unconvincing. I have attached to this letter a copy of the analysis between you and your patent attorney in which you can see the analysis prepared by your attorney. I hope that this analysis will be helpful to you in your defense. Sincerely yours,

Donald L. Dennison, Esq.  
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UNITED STATES DISTRICT COURT

for the

Southern District of Ohio

Ample Industries, Inc. )  
Plaintiff )  
v. ) Civil Action No.  
Dopaco, Inc. )  
Defendant )

**SUMMONS IN A CIVIL ACTION**

To: (Defendant's name and address)

Dopaco, Inc.  
Serve: Registered Agent  
241 Woodbine Road  
Dowington, PA 19335

A lawsuit has been filed against you.

Within 20 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Glenn D. Bellamy, Carrie A. Shufflebarger  
Greenebaum Doll & McDonald PLLC  
2900 Chemed Center  
255 E. Fifth Street  
Cincinnati, Ohio 45202

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

*CLERK OF COURT*

Date: .....

*Signature of Clerk or Deputy Clerk*

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)*  
was received by me on *(date)*

I personally served the summons on the individual at *(place)*

on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)*

, a person of suitable age and discretion who resides there,

on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_ , who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_

on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*: \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

*Server's signature*

*Printed name and title*

*Server's address*

Additional information regarding attempted service, etc:

**IN THE UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

AMPLE INDUSTRIES, INC.,	)	
4000 Commerce Center Drive	)	Civil Action No. 1:09-cv-795
Franklin, OH 45005	)	
Plaintiff,	)	Judge
v.	)	
DOPACO, INC.,	)	<b>COMPLAINT FOR</b>
100 Arrandale Boulevard	)	<b>DECLARATORY JUDGMENT</b>
Exton, PA 19341	)	<b>OF NON-INFRINGEMENT</b>
Defendant.	)	<b>WITH JURY DEMAND</b>
	)	

Declaratory Plaintiff, Ample Industries, Inc., complains against defendant Dopaco, Inc. for declaratory judgment as follows:

**NATURE OF THE ACTION**

1. This is an action for declaratory judgment of non-infringement of a U.S. patent and arises under the patent laws of the United States, Title 35.

**THE PARTIES**

2. Plaintiff, Ample Industries, Inc. ("Ample") is an Ohio corporation having its principal place of business at 4000 Commerce Center Drive, Franklin, Ohio 45005.

3. On information and belief, Defendant Dopaco, Inc. ("Dopaco") is a Pennsylvania corporation having a registered office address of 241 Woodbine Road, Downingtown, Pennsylvania 19335, and a place of business at 100 Arrandale Boulevard, Exton, Pennsylvania 19341. Also on information and belief, Dopaco is a wholly owned subsidiary of Cascades, Inc.

**JURISDICTION AND VENUE**

4. The Court has subject matter jurisdiction over this action for declaration of non-infringement of a U.S. patent pursuant to 28 U.S.C. §§ 1331, 1338(a), and 2201. The Court has

personal jurisdiction over Dopaco by virtue of Dopaco's substantial and continuous contacts with this judicial district, including its sale and distribution in this judicial district of products which it asserts are the subject of this patent infringement action, and because damage has been caused to Ample in this jurisdiction as a result of Dopaco's unfounded threats of legal action.

5. Venue in this Court is based upon 28 U.S.C. §§ 1391 and 1400(b).

**CAUSE OF ACTION FOR DECLARATION OF  
NON-INFRINGEMENT OF A U.S. PATENT**

6. This is a cause of action for declaration of non-infringement of a U.S. patent under 35 U.S.C. § 271 and 28 U.S.C. § 2201.

7. United States Patent No. 6,053,403 entitled "Conical Food Scoop" ("the '403 Patent") and assigned to Dopaco, Inc. issued on April 25, 2000. A copy of the '403 Patent is attached as Exhibit A.

8. Ample has manufactured, sold, and offered for sale a food carton or scoop which Dopaco asserts infringes one or more claims of the '403 Patent. Dopaco has admitted that the accused food carton does not literally infringe any claim of the '403 Patent, but asserts infringement under the Doctrine of Equivalents. Dopaco has alleged that it found a specimen of another version of Ample's product in commerce and asserts that this specimen literally infringes one or more claims of the '403 Patent, but has not disclosed the source of this specimen. Ample denies having produced a product like this other specimen.

9. Dopaco has asserted, through counsel, that Ample has infringed and is continuing to infringe the '403 Patent and has threatened to sue Ample in federal court for this alleged infringement. Attached as Exhibit B is a letter dated September 8, 2009 from Dopaco's counsel, Donald L. Dennison, to Ample's counsel stating:

My client intends to protect these rights and I have been authorized to take the appropriate legal action in the federal courts if the parties are unable to promptly settle this matter.

10. On October 19, 2009, Robert Fairchild, Vice President and General Manager of Ample, was called by Robert L. Cauffman and David L. Ochipinti, President and Vice President, respectively, of Doapco and was told that if Ample did not cease and desist Ample would be sued promptly. This threat was reaffirmed in another telephone conversation between Robert Fairchild and Robert L. Cauffman on October 29, 2009.

11. Ample has taken reasonable precautions to assure that it has not infringed, either literally or under the Doctrine of Equivalents, any valid claim of the '403 Patent.

WHEREFORE, Declaratory Plaintiff Ample prays for relief against Dopaco as follows:

- A) That judgment be entered finding that Ample has not infringed and is not infringing U.S. Patent No. 6,053,403;
- B) That Dopaco, its agents, sales representatives, servants and employees, associates, attorneys, successors and assigns, and any and all persons or entities acting by, through or under in active concert or in participation with any or all of them be enjoined and restrained preliminarily during the pendency of this action, and thereafter permanently, from making further threats or allegations of infringement of U.S. Patent No. 6,053,403;
- C) That judgment be entered that Dopaco be required to pay over to Ample all damages sustained by them due to such false allegations of patent infringement;
- D) That this case be adjudged and decreed exceptional under 35 U.S.C. § 285 entitling Ample to an award of its reasonable attorney fees and that such reasonable fees be awarded;
- E) That Ample be awarded its costs and prejudgment interest on all damages; and

F) That Ample be awarded such other and further relief as the Court deems just and proper.

**JURY DEMAND**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Declaratory Plaintiff Ample demands a trial by jury for all issues so triable.

Dated: October 29, 2009

Respectfully submitted,

/Glenn D. Bellamy/  
Glenn D. Bellamy (0070321) [gdb@gdm.com](mailto:gdb@gdm.com)  
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ATTORNEYS FOR PLAINTIFF

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

Ample Industries, Inc.

(b) County of Residence of First Listed Plaintiff Warren  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Glenn D. Bellamy, Carrie A. Shufflebarger, Greenebaum Doll &amp; McDonald, PLLC, 255 E. 5th St., Cinci, Ohio 45202, 513-455-7600

## DEFENDANTS

Dopaco, Inc.

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

n/a

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2 U.S. Government Defendant	<input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF	PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4 <input checked="" type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5 <input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORECLOSURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 851		<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 630 Liquor Laws		<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine Product Liability	<input type="checkbox"/> 640 R.R. & Truck		<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 650 Airline Regs.		<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle Product Liability	<input type="checkbox"/> 660 Occupational Safety/Health		<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 690 Other		<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury Product Liability			<input type="checkbox"/> 510 Selective Service
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 365 Other Personal Property Damage			<input type="checkbox"/> 850 Securities/Commodities Exchange
<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 385 Property Damage Product Liability			<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 390 Other Personal Injury			<input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	SOCIAL SECURITY	
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 411 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 861 HIA (1995)	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 412 Employment	<input type="checkbox"/> 515 Habeas Corpus: Accommodations	<input type="checkbox"/> 862 Black Lung (925)	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 413 Housing/ Accommodations	<input type="checkbox"/> 530 General	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 550 Civil Rights		<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 555 Prison Condition		<input type="checkbox"/> 950 Constitutionality of State Statutes
			FEDERAL TAX SUITS	
			<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	
			<input type="checkbox"/> 871 IRS--- Third Party 26 USC 7609	
IMMIGRATION				
			<input type="checkbox"/> 462 Naturalization Application	
			<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee	
			<input type="checkbox"/> 465 Other Immigration Actions	

## V. ORIGIN

(Place an "X" in One Box Only)

<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court
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## PRISONER PETITIONS

## TRANSFERRED FROM ANOTHER DISTRICT (SPECIFY)

## MULTIDISTRICT LITIGATION

Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 35 U.S.C. 271 and 28 U.S.C. 2201

Brief description of cause:

patent infringement

## VII. REQUESTED IN COMPLAINT:

 CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

## DEMANDS

CHECK YES only if demanded in complaint:  
JURY DEMAND:  Yes  No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

*Glenn D. Bellamy*

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IIP

JUDGE

MAG. JUDGE



**United States Patent** [19]  
**Cai**

[11] Patent Number: **6,053,403**  
[45] Date of Patent: **Apr. 25, 2000**

## [54] CONICAL FOOD SCOOP

[75] Inventor: Liming Cai, West Chester, Pa.

[73] Assignee: Dopaco, Inc., Exton, Pa.

[21] Appl. No.: 09/154,985

[22] Filed: Sep. 17, 1998

[51] Int. Cl. <sup>7</sup> B65D 3/28

[52] U.S. Cl. 229/400; 229/4.5; 229/104

[58] Field of Search 229/4.5, 104, 193, 229/400, 405

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## [56] References Cited

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3,630,430 12/1971 Struble .

Primary Examiner—Gary E. Elkins  
Attorney, Agent, or Firm—Dennison, Scheiner, Schultz & Wakeman

## [57] ABSTRACT

A french fry scoop of a slightly tapering truncated conical configuration with a curvilinear upper edge including a low concave front panel upper edge and a substantially higher convex rear panel upper edge. The scoop includes an integral bottom formed along fold lines.

21 Claims, 2 Drawing Sheets

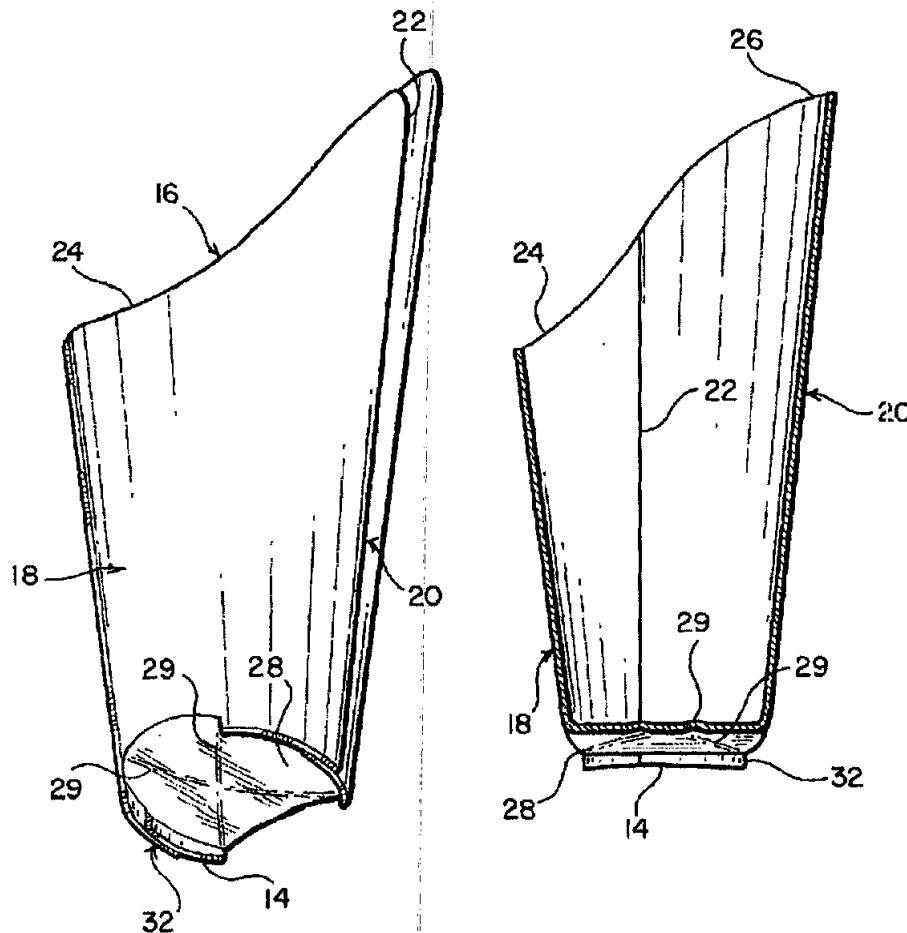


EXHIBIT A

U.S. Patent

Apr. 25, 2000

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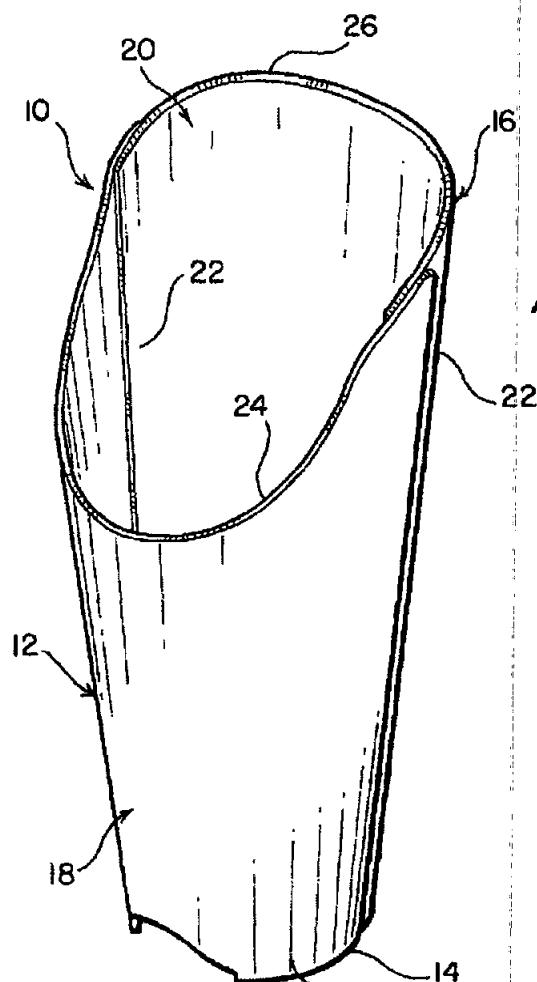


FIG. 1

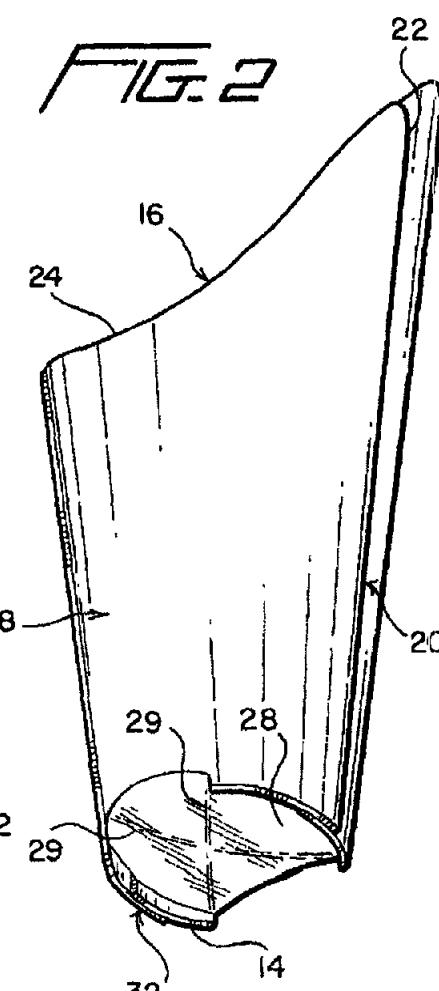


FIG. 2

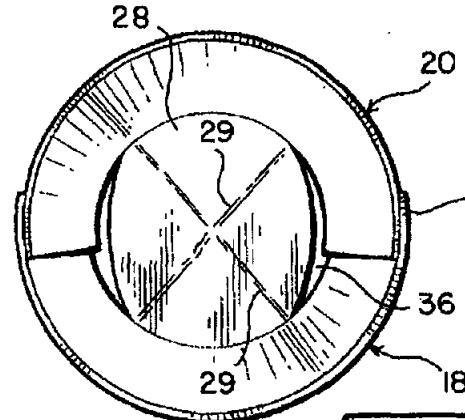


FIG. 3

U.S. Patent

Apr. 25, 2000

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